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Attorneys for Defendant, DIAKON LOGISTICS  
(DELAWARE), INC.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JOSUE SOTO, GHAZI RASHID, MOHAMED )  
ABDELFATTAH, on behalf of All Aggrieved )  
Employees, All Others Similarly Situated, and )  
the General Public, )

Plaintiffs/Counterdefendant, )  
v. )

DIAKON LOGISTICS (DELAWARE), INC., )  
a foreign corporation; and DOES 1 through 50, )  
inclusive, )

Defendants/Counterplaintiff. )  
DIAKON LOGISTICS (DELAWARE) INC., )  
Third-Party Plaintiff, )  
vs. )  
SAYBE'S, LLC, )  
Third-Party Defendant )

**CASE NO. 08-CV-0033-L-AJB**

**CLASS ACTION**

**DIAKON LOGISTICS (DELAWARE)  
INC.'S NOTICE OF MOTION AND  
MOTION TO DISMISS**

The Honorable Judge M. James Lorenz  
Location: Courtroom 14  
Hearing Date: July 14, 2008  
Time: 10:30 a.m.

1 NOTICE IS HEREBY GIVEN that on July 14, 2008 at 10:30 a.m. or as soon thereafter  
2 as the matter may be heard in Courtroom 14 of the United States District Court for the Southern  
3 District of California, Defendant/Counterplaintiff, Diakon Logistics (Delaware) Inc. ("Diakon"),  
4 will request that the Court dismiss the claims asserted by Plaintiffs, Josue Soto, Ghazi Rashid,  
5 and Mohamed Abdelfattah, in their individual capacities as stated in their First Amended  
6 Complaint.  
7

8 Diakon's Motion to Dismiss is brought pursuant to Rule 12(b)(6) of the Federal Rules of  
9 Civil Procedure. Plaintiffs cannot maintain their claims against Diakon because they are not real  
10 parties in interest under Rule 17 of the Federal Rules of Civil Procedure. With the limited  
11 exception of Soto from May 4 to November 2, 2005, Plaintiffs never contracted directly with  
12 Diakon. Instead, they each formed separate business entities, and those entities in turn entered  
13 into Service Agreements with Diakon. Because Plaintiffs are not parties to the Service  
14 Agreements with Diakon, having signed in their representative capacities only, they are not real  
15 parties in interested under the Service Agreements and may not sue Diakon directly under those  
16 agreements. Consequently, the Court should dismiss their claims against Diakon.  
17

18 This Motion to Dismiss is based upon this Notice and Motion, the Memorandum of  
19 Points and Authorities in Support of Diakon's Motion for Summary Judgment served  
20 concurrently herewith, and five supporting exhibits referenced in the Memorandum.  
21

22 Respectfully submitted,  
23

24 SCOPELITIS, GARVIN, LIGHT,  
25 HANSON & FEARY, P.C.

26 s/James H. Hanson

27 James H. Hanson

28 Robert L. Browning

R. Jay Taylor, Jr.

Christopher C. McNatt, Jr.

Attorneys for Defendant,  
Diakon Logistics (Delaware) Inc.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on May 5, 2008.  
Notice of this filing will be sent to the following parties by operation of the Court's electronic  
filing system. Parties may access this filing through the Court's system.

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